

SIEMENS

PATENT
Attorney Docket No. 2002P16048US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

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|-------------|---|---|-----------------|------------|
| Inventor: | T. Hanna et al. |) | Group Art Unit: | 2452 |
| | |) | | |
| Serial No.: | 10/724,799 |) | Examiner: | B. Whipple |
| | |) | | |
| Filed: | December 1, 2003 |) | Conf: No. | 5524 |
| | |) | | |
| Title | METHOD FOR MONITORING AN APPLICATION IN A PACKET SWITCHING NETWORK | | | |

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE UNDER 37 CFR 1.114

In response to the Final Office communication mailed October 23, 2009, Applicant respectfully submits the following remarks in connection with the above-identified application

Remarks/Arguments begin on page 2 of this paper, and

Declaration under CFR 1.132.

REMARKS

Claims 1, 3-7, 23, 24, and 32-42 are currently pending and presented for examination. Support for claims 41 and 42 are found, for example, in paragraph [0032]. Applicant respectfully request reconsideration and allowance of the pending claims in view of the following remarks.

Response to Rejections Under Section 103:

Claims 1, 3-4, 6-7 and 23-24, 32-33 and 36 stand rejected under 35 U.S.C 103(a) as being obvious over McDowell et al. (USPgPub 2002/0035605) in view of Szteto (USPgPub 2004/0215731). Claim 5 stands rejected under 35 U.S.C 103(a) as being obvious over McDowell in view of Szteto and in further view of IETF;2.1.12 SIP for Instant Messaging and Presence Leveraging (simple); 7/31/01. Claims 34-35 stand rejected under 35 U.S.C 103(a) as being obvious over McDowell in view of Szteto and in further view of Enete et al (USPgPub 2003/0208543). Applicant respectfully submits that these claims are patentable and respectfully request the Examiner to withdraw the Section 103 rejection.

Applicant respectfully points out that the Examiner has used the following two Szeto references during prosecution:

- US 7,133,900, hereafter referred to as Szeto, which was claims priority to provisional application 60/331,331 filed on Jul 6, 2001.
- USPN 2004/0215731, hereafter referred to as Tzann-en Szeto, which is a continuation-in-part of Szeto (7,133,900) filed July 2, 2003.

Paragraphs [0079-0094] of Tzann-en Szeto were not presented in Szeto and therefore get a priority date of July 2, 2003 which is after Applicant's priority date of December 9, 2002.

Applicant's claim 1 recites:

registering the software application by a monitoring application as a first communication partner in a list of communication partners accessible in the network, the software application residing on a first computing machine;

registering a presence application in the list as a second communication partner which monitors the first communication partner, the presence application residing on a second computing machine, the second computing machine an end user device;

transmitting information identifying the software application to be monitored to the first computing machine, the information including a name of the software application;

remotely monitoring the software application by the registered presence application;

transmitting a state of the software application to the presence application as a message transmitted from the first communication partner; and

transmitting a control instruction from the presence application to the monitoring application, the control instruction for controlling the software application,

wherein the monitoring is carried out on the basis of the message.

The Examiner equates McDowell's

- IM program as Applicant's software application
- Buddy list as Applicant's list of communication partners
- IM server as Applicant's monitoring application
- Presence Server as Applicant's presence application
- Subscriber status or device status as Applicant's state of the software application

Applicant's software application and presence application are both registered as communication partner in the list of communication partners. The Examiner states "an IM user must install the IM program and register an account and buddy list with the IM server" and cites paragraph [0052] "The Presence Server according to the present invention does much more than power the buddy list. Thus, it appears the Examiner considers that the terms "register" and "power" have the same meaning.

This means that the words of the claim must be given their plain meaning unless ~~the~~ the plain meaning is inconsistent with the specification. ...[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application (MPEP 2111.01)

Consistent with the claim language, the specification and the interpretation of a person of ordinary skill in the art the term "register...in a list" means to record or put into a list. However, as one skilled in the art would recognize that the term "**power**" means authority or control and McDowell's Presence Server controls the buddy list. Therefore, Applicant respectfully submits that "Presence Server ...power the buddy list" cannot reasonable by interpreted as "registering the presence application in the list. See also, declaration of Thorsten Laux under CFR 1.132.

Furthermore, Applicant's presence application is on the second computing machine and the second computing machine an end user device. In contrast, McDowell's Presence Server is a network device.

McDowell paragraph [0052] lines 7-16 recites:

Presence management allows subscribers to direct calls, messages, and data traffic to particular devices. Presence management extends well beyond ON or OFF information: subscribers may wish to indicate "ON-busy" or "ON-meeting" or "ON-emergency only" or any number of other personal settings. Subscribers may even desire for their presence information to be presented differently to different outside parties, for example "ON-busy" for co-workers but "ON-available" for spouse or supervisor. Moreover, Presence management preferences may change at different times of the day, and on different days of the week.

Claim 1 includes the limitation a state of the software application. Since the Examiner has interpreted McDowell's IM program as the software application, in order to read on said limitation, McDowell must teach or suggest a state of the IM program. However, McDowell teaches a state of a device and a personal setting of a subscriber. A state of a device may be ON or OFF (see e.g., paragraph [0050] "the Presence Server 112 is able to determine if a wireless device is ON or OFF") and a **personal setting** of the subscriber is based on what the subscriber wishes to indicate such as ON-meeting (see e.g., paragraph [0052]). The indication of a state of the device does not indicate a state of the software application. For Example the device may be ON but the software may not be running. Furthermore, the personal setting of subscriber is based on what a subscriber wishes to have displayed and does not indicate the state of the software application. For example, the software cannot be in a meeting. Clearly, one skilled in the art would not reasonably consider the state of the device and/or the state of the subscriber as the state of a software application let alone the state of the IM program. See also, declaration of Thorsten Laux under CFR 1.132.

Furthermore, the Examiner acknowledges that McDowell does not teach or suggest transmitting information identifying the software application to be monitored to the first computing machine, the information including a name of the software application. The Examiner indicates that Szeto teaches this limitation at col. 10, lines 23-32 and col. 11 lines 1-14. Applicant respectfully submits that Szeto teaches sending an environment identifier and does not teach or suggest that a name of the software application is transmitted. Szeto col. 10, lines 23-32 recites:

Sending environment identifiers between instant messaging applications and using the environment identifiers to change the environment of a receiving application has been described. Once this capability of redefining user interface command functions, executing animations and creating event driven actions to occur in an instant messaging window has been enabled, a rich variety of environments can be defined for instant messaging applications. Some examples of instant messaging environments that may be created are provided in FIGS. 9A through 9C.

Szeto col. 11 lines 1-14 recites:

FIG. 9C is a diagram illustrating another environment where the ability of an environment to interact with another application is illustrated. In the environment shown, a stock ticker obtains information from either the instant messaging program, a browser, or other program that makes stock information available to user. In addition, the environment includes a finance watermark link that directs the user to a financial site. In this environment, when the environment is loaded, a function is periodically executed that checks for data from the stock ticker application. In addition, environments can communicate information to other environments by sending messages. Also, environments can read certain information available to a messenger program such as a buddy list or in some cases stock quote information.

Applicant respectfully submits that Szeto col. 10, lines 23-32 teaches sending an environment identifier in order to change the environment of a receiving application and does not teach or suggest that a name of the software application is transmitted. Furthermore, col. 11 lines 1-14 of Szeto merely teaches that the environment is able to interact with another application (stock application) and does not teach or suggest that a name of the software application is transmitted.

The Examiner states “Clearly, an identifier of the application must be present in a scenario where environment identifiers are sent by via instant messaging to alter the program in ways such as launching the stock application at the remote client. The identifier is interpreted as the claimed ‘name’ of the of the software application”. Applicant respectfully submit that is unclear to Applicant if the Examiner interprets Szeto’s receiving application or Szeto’s another application as Applicant’s software application and respectfully request the Examiner to clarify this interpretation.

The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified (MPEP 706)

It appears for the above interpretation the Examiner considers Szeto’s another application as Applicant’s software application. Even if an identifier of the another application is present, as the Examiner suggests, that this does not teach or suggest that the another application identifier is a name.

Furthermore, claim 1 has the limitation registering the software application by a monitoring application as a first communication partner. Szeto does not teach or suggest registering the another application let alone registering the application as a communication partner. Moreover, this interpretation is inconsistent with interpretation that McDowell’s IM program is Applicant’s software application.

The Examiner further states Tzann-en Szeto discloses transmitting information identifying a software application to be monitored to a first computing machine, the information including a name of the software application ([0082]-[0084]). Paragraphs [0082]-[0084] of Tzann-en Szeto have a priority date of July 2, 2003 and thus cannot not be used as prior art.

The Examiner states “It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of McDowell by transmitting information identifying a software application to be monitored to a first computing machine, the information including the name of the software application as taught by Tzann-en Szeto in order to enable activities such a co-searching, co-browsing, co-drawing, games, etc (Tzann-en Szeto:[0094])”. Applicant respectfully submits that the claimed invention is not directed to co-searching, co-browsing, co-drawing, games.

Claim 23

Paragraphs [0096]-[0097] of Tzann-en Szeto have a priority date of July 2, 2003 and thus cannot not be used as prior art.

Claim 32

Paragraph [0084] of Tzann-en Szeto has a priority date of July 2, 2003 and thus cannot not be used as prior art.

Claim 38

Paragraphs [0082]-[0084] of Tzann-en Szeto have a priority date of July 2, 2003 and thus cannot not be used as prior art.

Claim 39

Paragraphs [0082]-[0084] of Tzann-en Szeto have a priority date of July 2, 2003 and thus cannot not be used as prior art.

Conclusion

The commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including fees for additional claims and terminal disclaimer fee, or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

Dated: Feb. 16, 2018

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